

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ETHEL M. KIMBROUGH

Claimant

VS.

THE UNIVERSITY OF KANSAS MEDICAL CENTER

Respondent

AND

**KEMPER INSURANCE COMPANY, SUPERIOR
NATIONAL INSURANCE GROUP C/O WESTERN
GUARANTEE FUND AND ROYAL &
SUNALLIANCE**

Insurance Carriers

Docket No. 251,548

ORDER

Respondent and one of its insurance carriers, Royal & SunAlliance appeal, from Administrative Law Judge Julie A.N. Samples' July 5, 2001, Award. The Appeals Board heard oral argument on February 13, 2002.

APPEARANCES

Dennis L. Horner of Kansas City, Kansas, appeared for the claimant. Michelle Duam Haskins of Kansas City, Missouri, appeared for the respondent and Kemper Insurance Company (hereinafter Kemper). Matthew J. Stretz of Kansas City, Missouri, appeared for respondent and Western Guarantee Fund (hereinafter Western Guarantee). W. Greg Wright of Overland Park, Kansas, appeared for respondent and Royal & SunAlliance (hereinafter Royal).

RECORDS AND STIPULATIONS

The record set forth in the Award has been considered by the Appeals Board (Board). However, it should be noted the Board considers the submission letters as argument and not evidence. Additionally, the March 29, 2001, regular hearing transcript indicates that the parties agreed that claimant's November 9, 2000, deposition testimony was a discovery deposition and should not be considered part of the record for the Award.¹

¹ Regular hearing transcript, March 29, 2001, p. 5.

Accordingly, the November 9, 2000, deposition is not part of the record. The Board has adopted the stipulations listed in the Award.

ISSUES

This is a claim for bilateral upper extremity and bilateral lower extremity injuries resulting from a series of accidents caused by claimant's work activities from October 1998 through March 27, 2001, the last day claimant worked before the March 29, 2001, regular hearing. The Administrative Law Judge (ALJ) found claimant's accident date was March 27, 2001. Work disability was not an issue because claimant continues to work at her regular job as a cook for respondent. The ALJ awarded claimant a 33 percent permanent partial general disability based on the functional impairment for her bilateral upper extremity injuries. But the ALJ denied claimant's benefits for the lower extremity injuries as claimant failed to prove those lower extremity injuries occurred while working for respondent. The ALJ also found respondent had failed to prove that claimant unreasonably refused to undergo surgical treatment as recommended for her bilateral carpal tunnel syndrome injuries.

Respondent and Royal appeal and raise the following issues in their application for review:

1. Whether claimant met with personal injury by accident from October 1, 2000, through March 27, 2001 [sic], the date of the regular hearing.
2. Whether respondent and insurer Royal & SunAlliance had notice for Royal and SunAlliance's coverage period beginning on October 1, 2000 through March 27, 2001 [sic], the date of the regular hearing.
3. The nature and extent of claimant's alleged functional impairment.
4. Whether claimant is entitled to unauthorized medical benefits.
5. Whether claimant is entitled to future medical benefits.
6. Whether K.A. R. 51-9-5 prohibits or limits claimants [sic] recovery because of her unreasonable refusal to undergo surgical treatment.

7. Whether claimant's alleged accidental injuries arose out of and in the course of her employment with respondent prior to October 1, 2000 before the Royal & Sunalliance [sic] coverage period.
8. Claimant's date of accident.

Respondent and Western Guarantee, in their brief before the Board, agree with the ALJ's Award, except they join Royal's argument that the medical testimony contained in the record proves that claimant unreasonably refused to undergo bilateral carpal tunnel syndrome release surgery.

Respondent and Kemper agree with the ALJ's Award and request the Board to affirm the Award.

In claimant's brief before the Board, she contends that she proved she also injured her lower extremities during this series of accidents while she was employed by the respondent. Accordingly, claimant contends, based on the medical opinion of Dr. Truett Swaim, that she is entitled to a permanent partial general disability award of 43 to 44 percent for the functional impairment for both the bilateral upper and bilateral lower extremity injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Award should be affirmed. Moreover, the Board agrees with the ALJ's analysis of the evidence and her finding and conclusions as set forth in the Award. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts those findings and conclusions as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, and decision and order of the Board that ALJ Julie A.N. Samples' July 5, 2001, Award, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Dennis L. Horner, Attorney for Respondent
Michelle Duam Haskins, Attorney for Respondent and Kemper Ins. Co.
Matthew J. Stretz, Attorney for Respondent and Western Guarantee Fund
W. Greg Wright, Attorney for Respondent & Royal & SunAlliance
Julie A. N. Samples, Administrative Law Judge
Philip S. Harness, Workers Compensation Director